

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Crl.Rev.Pet.No. 2561 of 2007()

SC.106/2007 of ADDL.SESIONS COURT (ADHOC), KOTTAYAM

REVN. PETITIONER: ACCUSED

**BIJU JOSEPH @ BIJU, S/O.JOSEPH,
KANNAKERIL HOUSE, VALLONCHIRA BHAGOM,
PAIPPAD, CHANGANACHERRY.**

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENTS: COMPLAINANT

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

V. RAMKUMAR, J.

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Crl. R.P. No. 2561 OF 2007 A
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Dated this the 16th day of July, 2007

O R D E R

The revision petitioner, who is the accused in S.C.No.106/2007 on the file of the Additional Sessions Court (Adhoc-I), Kottayam, challenges the charge framed by that court against the petitioner for offences punishable under sections 308 and 304 Part I IPC.

2. The admitted facts are the following:-

On 27.12.2005 at .15 p.m. the tipper lorry driven by the petitioner collided with a KSRTC bus resulting in the death of 10 passengers in the bus and injury to 21 persons. The Changanacherry police registered Crime No.990/2005 originally for offences punishable under sections 279, 337, 338 and 304 IPC read with sections 134(a), 134(b) and 187 of the Motor Vehicles Act, 1988. After investigation, the police filed a charge sheet deleting the aforesaid offences except 304 IPC and adding 308 IPC. After committal of the case to the Sessions court, the Additional Sessions Court as per the impugned order framed charge against the petitioner for offences punishable under

sections 304 and 308 IPC. It is the said order framing charge on 11.6.2007 which is assailed in this revision petition.

3. The admitted factual position is that the petitioner was driving the tipper lorry from west to east along the Alappuzha-Changanacherry road which is running west to east and having at the relevant point a width of 8.95 metres for the tarred portion with a northern road margin having 2.8 metres width and an eastern road margin having a width of 1.3 metres. The KSRTC bus was coming from east to west. The exact scene of hit is at a point 4.5 metres to the south of the northern tarred edge of the road. This, prima facie, indicates that the tipper lorry driven by the petitioner has been driven in a rash and negligent manner and slightly on the wrong side of the road justifying the offences punishable under sections 279, 337 and 338 IPC which were the main offences shown while the FIR was registered. Merely because 10 persons died and 21 persons got injured it does not follow that the driver of the tipper lorry intended that result or knew that his act, in all probability, would result in that consequence. It was a clear case of rash and negligent driving. As rightly observed by the apex court in the recent decision in ***Prabhakaran Vs. State of Kerala***

in Criminal Appeal No.775/2007 decided on 21.6.2007(Supreme Court), where a case of death by a rash and negligent act is made out, it obviously does not apply to a case of death being caused with the intention to cause death or with the knowledge that the act will, in all probability, cause death. The learned Additional Sessions Judge was overlooking the above vital aspects of distinction while framing the charge. Prima facie, the offences which are attracted are those punishable under sections 279, 337, 338 and 304A IPC and 134(a), 134(b) and 187 of the Motor Vehicles Act, 1988. The impugned order framing charge is set aside. The court below shall frame fresh charge for the aforementioned offences and exercising its power under section 228(1)(a) shall transfer the case to the Chief Judicial Magistrate or any Judicial Magistrate of First Class for trial and disposal.

This revision is allowed accordingly.

(V. RAMKUMAR, JUDGE)

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